IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 9 OF 2001

Vishnum Shankar Naik,
aged 55 years, son of
Shankar Naik, agriculturist,
R/o Nagzar, Bhoma, Ponda,
Goa. ... Appellant

versus

Shri Ananta Ayu Naik(deceased)
major in age, agriculturist,
r/o Nagzar, Bhoma, Ponda, Goa.

Legal Heirs:

1(a) Gokuldas Anant Naik,
aged 33 years, r/o Nagzarwada,
Bhoma.

1(b) Smt. Meera Gokuldas Naik,
w/o Gokulda Anant Naik,
aged 30 years, r/o Nagzarwada,
Bhoma.

1(c) Mr. Prakash Anant Naik,
aged 30 years, r/o Nagzarwada,
Bhoma

1(d) Mrs. Sukanti Prakash Naik,
aged 28 years, w/o Prakash
Anant naik, r/o Nagzarwada,
Bhoma.

1(e) Master Ramrai Anant Naik,
aged, 27 years, r/o Nagzarwada,
Bhoma(since deceased through
legal heir respondent No.1-g).

1(f) Miss Lata Anant Naik,
aged 25 years, r/o
Nagzarwada, Bhoma.

1(g) Master Bity Anant Naik
alias Ratnakar Anant
Naik(since deceased)
aged 23 years, r/o
Nagzarwada, Bhoma.

1(h) Smt. Manik Manguesh
Bhisaji, c/o Shri Manguesh
Bhishaji, Peoples High School,
Panaji-Goa.

1(i) Shri Maguesh Bhisaji
Peoples High School,
Panaji-Goa.

1(j) Smt. Sukanti Ramrai Naik
aged 30 years,
Nagzarwada, Bhoma,
P.O. Marcela. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Appellant.

Mr. U. S. Kolwalkar, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 23RD SEPTEMBER,2005.

ORAL JUDGMENT

This is plaintiff's second appeal arising from R.C.S.

No.10/76 and was admitted on 3 substantial questions of law by virtue of Order of this Court dated 5-7-2001. Question No.2 on which arguments have been advanced on behalf of both the parties reads as follows:-

> "Whether the Additional District Court could have ignored that the declaration in Order dated 21.9.98 in Tenancy Case No.9/94, declaring the appellant to be a tenant in respect of the suit property when the said Judgment might have attained finality and was not challenged by the respondents who were the parties to the proceedings in which the said Judgment and Order was passed".

2. The parties hereto shall be referred to in the names as they appear in the cause title of the said Civil Suit. The dispute between both the parties was regarding a property belonging to Vassant Gangadhar Sinai Kenkre and others known as "Jacobichem Bhat" and surveyed under Nos. 6/2 and 16/0 of village Bhoma. The plaintiff claimed to be a tenant of the said property and so did the defendant, and the plaintiff filed the said Civil Suit for permanent injunction to restrain the defendant

from disturbing the peaceful possession and enjoyment of the said property by the plaintiff.

3. Although, the plaintiff as well as the defendant(now represented by his legal heirs) had claimed to be the tenants of the said Kenkres, the issue of tenancy was not referred to for the decision of the Mamlatdar and the learned trial Court by his Judgment/Order dated 31-10-1990 came to the conclusion that the plaintiff was not in possession of the suit property at the time of filing of the suit and, therefore, relief of permanent injunction simpliciter could not be granted to the plaintiff.

4. The plaintiff filed an appeal before the District Court, Panaji, being R.C.A. No.79/90 and in the said appeal produced a declaration obtained by the plaintiff in his favour from the Mamlatdar dated 21-9-1998 whereby the Mamlatdar of Ponda had allowed the application filed by the plaintiff under Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (Act, for short) in respect of survey nos. 16/0 and 6/2 of village Bhoma. Although, the plaintiff produced the said declaration dated 21-9-1998 of the Mamlatdar before the learned Additional

District Judge, it appears that till date the defendant has not challenged the said declaration. The defendant apparently sought leave to produce the copies of the roznama of the said Tenancy Case with a view to challenge the said declaration and the learned Additional District Judge referring to the said roznama/extract of the proceeding sheet in the said Tenancy case No.9/94 found that there was some manipulation in the record of the roznama dated 31-3-1994 showing that the opponents therein were present as to give colour of valid service and proceedings. The learned Additional District Judge also found that notices which were issued to opponents no.18-19 were not served and yet the proceedings had continued without due service on them and that is how the said declaration came to be made. The learned Additional District Judge also found some other additions made and further observed that the said extract did not reveal that opponents no.11 to 17 were served and no attempt was made to bring the legal representatives on record of some of the opponents who had expired and, therefore, the proceedings had abated and, therefore, concluded that the Mamlatdar's declaration/order was ex facie without jurisdiction. It may be noted that the learned Additional District Judge had

also taken note of the fact that the Malatdar had made a reference that notices were sent to all the respondents through registered post with acknowledgement due without indicating whether all the respondents in the proceedings before him had at all been served. The learned Additional District Judge concluded by stating that although, the said declaration was produced by the plaintiff to support his claim that he was a tenant in possession of the suit property it could not come to the aid of the plaintiff as there was jugglery in the proceedings.

5. Mr. S. D. Lotlikar, the learned Senior Counsel appearing on behalf of the plaintiff has submitted that the learned Additional District Judge had no jurisdiction to find out whether the said declaration given by the Mamlatdar was properly obtained or not but based on the said declaration was bound to decree the suit of the plaintiff. Relying on Section 58, Sub-Section 2 of the said Act, Mr. Lotlikar, the learned Senior Counsel has submitted that an Order passed by the Mamlatdar under the Act cannot be questioned in a Civil Court. It is the submision of Mr. Lotlikar, the learned Senior Counsel that in

case, if at all there was any irregularity in the service of the opponents in the said Tenancy Case then the remedy available to the defendant was to approach the learned Mamlatdar and get it corrected.

6. On the other hand, Mr. U. S. Kolwalkar, the learned Counsel appearing on behalf of the respondents has submitted that the learned Additional District Judge was justified in not placing any reliance on the said declaration issued by the Mamlatdar because that was a nullity as the opponents in the said proceedings were not at all served. Mr. Kolwalkar, the learned Counsel has placed reliance on the case of **S. P. Chengalvaraya Naidu(dead) by LRs** v. **Jagannath(dead) by LRs. and others**((1994) 1 SCC 1) wherein the Supreme Court has held that a Judgment or Decree obtained by fraud can be treated as a nullity and can be questioned even in collateral proceedings. Mr. Kolwalkar has also placed reliance on the case of **Husein Miya Dosumiya** v. **Chandubhai Jethabha and another**(AIR 1954 Bombay 239) and has submitted that since the said declaration/order of the Mamlatdar is incompetent or ultra vires, then the order is a nullity and it can be challenged in a Civil Court. There can be no

quarrel with the propositions as laid down by the Supreme Court as well as the learned Division Bench of this Court in the decisions cited on behalf of the defendant by the learned Counsel Mr. Kolwalkar. Sub-section 2 of Section 58 of the said Act reads as follows:-

> (2) Save as provided in this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar, Tribunal, Collector or Government, and no order passed by these authorities under this Act shall be questioned in any Civil or Criminal Court".

7. Admittedly, the plaintiff had produced the said declaration given by the Mamlatdar under Section 7 of the said Act holding him to be a tenant in respect of the suit property. The defendant or for that matter the landlord till date had not challenged the said declaration. As can be seen from the observation of the learned Additional District Judge there was already an order made by the Mamlatdar which showed that notices were sent to all the opponents by registered post with acknowledgement due and, therefore, such notices were presumed to have been served on the said opponents to whom they were sent. In my view, it was not open to the learned Additional District Judge to have examined the extract of the

roznama of the proceedings before the Mamlatdar and come to the conclusion that the opponents in that case were not served and thereafter conclude that the declaration so obtained was obtained by jugglery and, therefore, could not be acted upon. In fact, it was for the said opponents, in case, they were not served to approach the Mamlatdar and get the said order set aside. The ex parte order need not necessarily be an order which is a nullity. Here was a case where the declaration given by Mamlatdar, though ex-parte, was a declaration given by a Court of competent jurisdiction. As long as the defendant had not challenged the said declaration either before the Mamlatdar or other Revenue Authoritries or for that matter before a Civil Court on the ground that it was a nullity it was impermissible for the learned Additional District Judge just to examine the extracts of the proceedings, and without any evidence being led, to come to the conclusion that the said declaration was obtained by jugglery. The said declaration as long as it was not set aside in competent proceedings was binding on a Civil Court and the learned Additional District Judge based on the said declaration ought to have decreed the suit of the plaintiff.

8. Consequently, the appeal deserves to succeed. The Question No.2 is answered accordingly. The Judgments/Orders of both the Courts

below are hereby set aside and the suit of the plaintiff is decreed in accordance with the said declaration, with no order as to costs.

N. A. BRITTO, J.

RD.